HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P.MS No. 975 of 2004

Principal Welham Boys school

Vs.

Add. Civil Judge/FTC-III, Dehradun

Approved for reporting

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~~Not approved for reporting~~

Date of decision 8.5.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

WRIT PETITION NO. 975 (MS) OF 2004

1. Principal Welham Boys School, 5-Circular Road, Dehradun.
2. The Chairman, Board of Trustees of Welham Boys School, through Principal Welham Boys School, 5-Circular road, Dehradun. .....Petitioners.

Versus

1. Addl. District Judge/FTC-III, Dehradun.
2. Civil Judge (JD), Dehradun.
3. Shri Patel Balwant Rai, S/o Patel Sharpar Bai Ram Bhai, R/o 2-B, Pritam Road, Dehradun.

.....Respondents.

Dated: 8th May, 2006

Hon'ble Rajesh Tandon, J.

Heard Mr. Kanwal Jeet Singh & Mr. N.S. Pundir, Advocate for the petitioner and Standing Counsel for the respondents no.1 and 2.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 3rd June, 2000 issued by the respondent no. 2.

Briefly stated, a suit was filed being Suit No. 115 of 1984 in the Court of Civil Judge Dehradun. The respondent no. 3 has alleged himself to be the teacher on probation in Welham Boys School Association run by a Society duly registered under the provisions of the Societies Registration Act, 1860.

A written statement has been filed in the suit by the defendant. During the pendency of the suit, an application under Order 7 Rule 11 C.P.C. was filed by the petitioner stating therein that the suit is not maintainable. The said application was rejected by the Civil Judge. A revision being revision no. 108 of 2000 was preferred by the petitioner. During the course of the hearing of the Revision certain provisions of Code of

Civil Procedure was amended and in view of the judgment of the Hon'ble Supreme Court in Shivshakti Vs. Swaraj Developers reported in AIR 2003 SC Page 2434 it was held that the provisions of amended CPC. would apply to pending revisions. Therefore, the revision before the respondent no. 1 was withdrawn by the petitioners. After withdrawing the revision, the petitioner has preferred the present writ petition.

It may be stated that the application under Order 7 Rule 11 C.P.C. has been contested and the suit is pending, therefore, the matter is referred to the Addl. Civil Judge (Junior Division), Dehradun, who shall decide the suit itself within a period of four months from the date of production of the certified copy of the order as the suit is an old one of 1984. The Court below shall decide the issue with regard to the jurisdiction of the Court.

Any order passed under Order 7 Rule 11 C.P.C. will not come in the way while deciding the suit itself when the issues are decided with regard to the maintainability of the suit.

Writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

08.05.2006
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